IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI, NORTHERN DIVISION

GLORIA J. JENKINS
SHELIA R. HOLMES **PLAINTIFFS**

V. **CIVIL ACTION NO.: 3:17-CV-75-CWR-FKB**

DITECH FINANCIAL, LLC,
ROBINSON & HOLMES, PLLC,
et al **DEFENDANTS**

DITECH FINANCIAL, LLC'S MOTION TO DISMISS

Defendant Ditech Financial, LLC ("Ditech") is entitled to dismissal with prejudice of the Complaint filed against it by Plaintiffs Gloria J. Jenkins ("Jenkins") and Shelia R. Holmes ("Holmes") (collectively "Plaintiffs"), pursuant to Federal Rules of Civil Procedure 12(b)(4), 12(b)(5), and 12(b)(6) as set forth below:

1. The Plaintiffs initiated this lawsuit on May 25, 2016 by filing a Complaint against Ditech Financial, LLC and Robinson & Holmes PLLC in Rankin County Chancer Court. Plaintiff Holmes thereafter filed a series of affidavits in December 2016 and January 2017. Thereafter, on January 3, 2017, the Chancery Clerk issued a summons to Ditech. A federal form proof of service was filed by Plaintiffs on January 4, 2017 purporting to evidence service on Ditech, via certified mail, to Ditech Financial at P.O. Box 979282, Miami, Florida, 33197.

2. This matter was removed to this Court on February 3, 2017 by the United States Equal Employment Opportunity Commission ("EEOC").

3. Ditech is entitled to dismissal of this matter in its entirety, with prejudice.

4. First, Plaintiffs' purported service of the summons on Ditech is ineffective. Plaintiff failed to properly serve Ditech in accordance with Miss. R. Civ. P. 4. Further, the

purported service was untimely—more than 100 days after the expiration of the 120 day period in which the Plaintiffs were required to serve Ditech.

5. Second, Plaintiffs' claims are insufficiently plead under the minimum pleading standards of Federal Rule of Civil Procedure 8. Plaintiffs also fail to allege their fraud claim with particularity as required by Federal Rule of Civil Procedure 9.

6. Third, Plaintiffs' Complaint fails to state a claim for which relief may be granted and therefore should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiffs' claims for intentional infliction of emotional distress fail to set forth any facts to demonstrate that any of the alleged conduct was so outrageous or extreme to state a claim for relief against Ditech. This claim is also barred by the statute of limitations. Similarly, Plaintiffs' claim for fraud is barred by the statute of limitations and fails to identify with particularity any factual allegations to support a claim of fraud against Ditech. Finally, to the extent Plaintiffs seek to advance a claim under the Consumer Fraud Protection Act, such claim fails as it does not afford a private right of action to the Plaintiffs.

7. For these reasons, and those set forth in its accompanying Memorandum of Law in Support of its Motion to Dismiss, Ditech respectfully requests that the Plaintiffs' Complaint be dismissed in its entirety against Ditech, with prejudice.

Respectfully submitted, this the 10th day of February, 2017.

/s/ Erin Saltaformaggio
Erin Saltaformaggio (MBN 103999)
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ATTORNEY FOR DITECH FINANCIAL, LLC

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2017, I have filed a true and correct copy of the foregoing via the Court's ECF filing system, which will provide notice to all ECF participants. A true and correct copy of the foregoing has been served via U.S. Mail, postage prepaid, upon the following non-ECF participants:

Shelia R. Holmes
313 Oak Grove Church Road
Pearl, Mississippi 39208

Gloria Jenkins
298 Oak Grove Church Road
Pearl, Mississippi 39208

Pro Se Plaintiffs

/s/ Erin Saltaformaggio
OF COUNSEL